

REMARKS

Specification

Applicant has amended the specification to include reference to a pending United States Patent Application filed on the same day of the application, referenced previously without serial number. No new matter has been added. Accordingly, Applicant requests the amendment to the specification be entered.

Claim Rejections

In the Non-Final Office Action mailed on May 21, 2004, the Examiner reviewed pending claims 1-20. The Examiner rejected claims 1-2, 6 and 7 pursuant to 35 U.S.C. §102(b) as being anticipated by *Kameda, et al.* (hereinafter "*Kameda*") (U.S. Patent 5,571,239). The Examiner further rejected claims 3-5 and 8-16 pursuant to 35 U.S.C. §103(a) as being unpatentable over *Kameda, et al.* Finally, the Examiner rejected claims 17-20 under 35 U.S.C. §103(a) as being unpatentable over *Kameda, et al.* in view of *Yuan, et al.* Applicant has amended its claims, cancelled claim 2, 3 and 19 and added new claims 21-27. For the reasons set forth below, these pending claims stand in condition for allowance.

Applicant has amended claim 1 to include the limitations of claim 2 and 3. Claim 1 now requires in pertinent part, "generating a test sound wave to obtain actual environmental data." This features is not shown by the cited references. Indeed, the Examiner acknowledges that *Kameda* does not explicitly disclose the use of a test sound wave...." [Non-Final Office Action, p. 3]. Instead, the Examiner argues that *Kameda* discloses an intake noise wave length at a reference temperature and argues that a test

sound wave is generated theoretically. However, the cited passages do not disclose the generation of an actual sound wave but instead describe the calculation of a wave length and an engine speed. Nowhere in the cited passage is there disclosed the generation of an actual test sound wave. More importantly, there is nothing in the reference that indicates a test sound wave is generated “to obtain actual environmental data” as required by claim 1. For this reason, claim 1 and its dependants, claims 4-9, stand in condition for allowance.

Independent claim 10 has been amended to include the limitation, “sensing a system condition relating to an error in noise canceling.” This feature is not shown by the cited references. For this reason, claim 10 and its dependents, claims 11-16, and new claims 21-26, stand in condition for allowance.

Independent claim 17 has been amended to include the limitation of claim 19. Claim 17 now requires, “said control unit programmed to generate a test sound wave through said speaker to obtain actual environmental data.” The Examiner previously rejected claim 19 based on the combination of *Kameda* and *Yuan, et al.* The Examiner acknowledges that *Kameda* does not specifically disclose a use of a test sound wave but argues that such a wave is generated theoretically. However, nothing within *Kameda* or any of the other cited references discloses the actual generation of a test sound wave through a speaker to obtain actual environmental data. For this reason, claim 17 and its dependents, claims 18 and 20, stand in condition for allowance.

New Claims

Claims 21-26 have been added. These claims stand in condition for allowance because they are dependent upon independent claim 10, which is in condition for

allowance. Moreover, new claim 21 requires, “wherein the system condition relates to engine noise level.” This feature is not shown by the cited references.

New claim 22 requires, “wherein the system condition relates to background noise level.” Again, this feature is not shown by the cited references. Therefore, claim 22 is in condition for allowance for this additional reason.

New claim 23 requires, “wherein the system condition relates to a level of engine noise to be attenuated and a level of background noise.” This feature is not shown by the cited references. Therefore, new claim 23 is in condition for allowance.

New claim 24 requires, “wherein the system condition relates to a throttle position.” This feature is not shown by the cited references. Therefore, claim 24 is in condition for allowance.

New claim 25 requires, “including the step of recording the error in noise canceling.” This feature is not shown by any of the references. Claim 25 stands in condition for allowance.

New claim 26 requires, “wherein ceasing the generation of the noise canceling signal occurs for a predetermined time period if a preset level of the errors in noise canceling is exceeded.” This feature is not shown by the cited references. Therefore, claim 26 stands in condition for allowance.

For the foregoing reasons, Applicant requests claims 1, 4-18 and 20-26 be allowed.

Applicant believes that additional fees in the amount of \$54.00 is required for three claims in excess of twenty. A check in the amount of \$54.00 is enclosed. The

Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that the enclosed Response is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on August 12, 2004.


Theresa M. Palmateer

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